

## Food and Drug Administration, HHS

## § 1.285

granted admission under other provisions of the act or other U.S. laws.

[68 FR 59070, Oct. 10, 2003; 69 FR 4851, 4852, Feb. 2, 2004]

### **§ 1.284 What are the other consequences of failing to submit adequate prior notice or otherwise failing to comply with this subpart?**

(a) The importing or offering for import into the United States of an article of food in violation of the requirements of section 801(m), including the requirements of this subpart, is a prohibited act under section 301(ee) of the act (21 U.S.C. 331(ee)).

(b) Section 301 of the act (21 U.S.C. 331) prohibits the doing of certain acts or causing such acts to be done.

(1) Under section 302 of the act (21 U.S.C. 332), the United States can bring a civil action in Federal court to enjoin persons who commit a prohibited act.

(2) Under section 303 of the act (21 U.S.C. 333), the United States can bring a criminal action in Federal court to prosecute persons who are responsible for the commission of a prohibited act.

(c) Under section 306 of the act (21 U.S.C. 335a), FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States or any person who has engaged in a pattern of importing or offering adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

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### **§ 1.285 What happens to food that is imported or offered for import from unregistered facilities that are required to register under 21 CFR part 1, subpart H?**

(a) If an article of food from a foreign manufacturer that is not registered as required under section 415 of the act (21 U.S.C. 350d) and subpart H is imported or offered for import into the United States, the food is subject to refusal of admission under section 801(m)(1) of the act and § 1.283 for failure to provide adequate prior notice. The failure to provide the correct registration number of the foreign manufacturer, if registration is required under section 415

of the act and 21 CFR part 1, subpart H, renders the identity of that facility incomplete for purposes of prior notice.

(b) Unless CBP concurrence is obtained for export and the article is immediately exported from the port of arrival, if an article of food is imported or offered for import from a foreign facility that is not registered as required under section 415 of the act and is placed under hold under section 801(l) of the act, it must be held within the port of entry for the article unless directed by CBP or FDA.

(c) *Status and movement of held food.*

(1) An article of food that has been placed under hold under section 801(l) of the act shall be considered general order merchandise as described in section 490 of the Tariff Act of 1930, as amended (19 U.S.C. 1490).

(2) Food under hold under section 801(l) must be moved under appropriate custodial bond. FDA must be notified of the location where the food has been or will be moved, within 24 hours of the hold. The food subject to hold shall not be entered and shall not be delivered to any importer, owner, or ultimate consignee. The food must be taken directly to the designated facility.

(d) *Segregation of held foods.* If an article of food that has been placed under hold under section 801(l) of the act is part of a shipment that contains articles that have not been placed under hold, the food under hold may be segregated from the rest of the shipment. This segregation must take place where the article is held, if different. FDA or CBP may supervise segregation. If FDA or CBP determine that supervision is necessary, segregation must not take place without supervision.

(e) *Costs.* Neither FDA nor CBP will be liable for transportation, storage, or other expenses resulting from any hold.

(f) *Export after hold.* An article of food that has been placed under hold under section 801(l) of the act may be exported with CBP concurrence and under CBP supervision unless it is seized or administratively detained by FDA or CBP under other authority.

(g) *No Registration or Request for Review.* If an article of food is placed under hold under section 801(l) of the act and no registration or request for